



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

It appears that there is no dispute that claimant sustained a compensable injury on September 30, 2005 which has necessitated in a surgical procedure to fuse claimant's right wrist, a right carpal tunnel release, right ulnar nerve decompression and right anterior/posterior interosseous neurectomies. Claimant has since been treated conservatively for his ongoing pain complaints. At one point a spinal cord stimulator was suggested, but that suggestion was retracted due to claimant's "chronic history of depression and anxiety disorder."<sup>1</sup>

Claimant sought additional treatment and a preliminary hearing was held. At the conclusion of those proceedings, the ALJ elected to appoint Dr. Jon Parks, a physician who normally addresses pain management issues, to perform an independent medical examination in order to speak to claimant's diagnosis, the need for further treatment, the ability to work and the need for restrictions.<sup>2</sup>

Dr. Parks saw the claimant for an IME and opined that the claimant was being inadequately treated for depression and anxiety and that the claimant needed to be seen and treated by a mental health specialist who has experience with dealing with depression and anxiety and a chronic pain state.<sup>3</sup> He did not believe that claimant's depression and anxiety was brought on by the wrist injury as claimant had a history of these problems dating back to 1985. But he did seem to believe that claimant's present complaints of pain would be more effectively dealt with if the other peripheral psychological issues were kept in better check.

Although claimant's brief would suggest otherwise, Dr. Parks is not the only physician to have evaluated claimant. Claimant met with Dr. T.A. Moeller, a licensed psychologist, on November 5, 2007 who later opined that the claimant has a pain disorder associated with psychological factors and a general medical condition. And while claimant is in need of mental health care for his anxiety and depression, Dr. Moeller felt that such condition could not be determined as having been caused or exacerbated by the work-related physical injury. He went on to explain that "[w]ithout appropriate treatment, the anxiety and depression could adversely affect Mr. Walden's response to any continuing treatment of his work-related physical injury and those psychological factors either caused

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<sup>1</sup> Claimant's Brief at 1 (filed Feb. 26, 2008).

<sup>2</sup> Respondent's Brief at Ex. C (filed Mar. 19, 2008).

<sup>3</sup> Dr. Parks' IME Report dated Feb. 14, 2008 at 6.

or exacerbated by that physical injury.”<sup>4</sup> Dr. Moeller explained that “there is a co-occurrence of other factors known to cause psychological distress” along with claimant’s “conscious attempt to over-endorse his symptoms”. And therefore, these two factors significantly cloud the etiology of claimant’s psychological distress.<sup>5</sup>

Dr. Moeller recommended that the claimant get further and ongoing mental care for his anxiety and depression and although the work-related injury did not cause or make worse these problems they could adversely affect his response to continuing treatment for his work-related physical injury and those factors that are caused or exacerbated by that physical injury.<sup>6</sup>

Dr. Lucas, an orthopaedic surgeon, was claimant’s treating physician and in May 2007, he rated and released claimant, finding him at maximum medical improvement.

When faced with this evidence, the ALJ concluded that claimant had failed to sufficiently establish that he was in need of additional psychological/psychiatric treatment. He also concluded that claimant failed to establish that his need for the sought-after treatment is causally related to his work-related injury.<sup>7</sup>

Respondent contends there is no jurisdiction for this appeal as this is nothing more than a preliminary hearing order overseeing the need for additional treatment.<sup>8</sup> While this contention is true, there is an allegation here that the ALJ exceeded his jurisdiction in denying the request for additional treatment. That allegation triggers jurisdiction under K.S.A. 44-551. However, under these facts this Board Member does not find that the ALJ exceeded his jurisdiction.

A close review of the file shows that there is nothing within this record that even remotely suggests the ALJ exceeded his jurisdiction in deciding that claimant was not entitled to the psychological/psychiatric treatment he seeks. Claimant may not agree with the ALJ’s decision but the ALJ did what he was empowered to do - to make decisions regarding the course of treatment that should be made available to claimant. Thus, the ALJ did not exceed his jurisdiction in denying claimant’s request. That portion of the ALJ’s Order is affirmed.

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<sup>4</sup> Dr. Moeller’s Report dated Dec. 3, 2007 at 20.

<sup>5</sup> *Id.* at 16.

<sup>6</sup> *Id.* at 20.

<sup>7</sup> ALJ Order (Feb. 27, 2008).

<sup>8</sup> Respondent’s Brief at 2-3 (filed Mar. 19, 2008).

The second aspect of claimant's appeal is also jurisdictional. Put in its simplest terms, the ALJ concluded not simply that claimant was not entitled to the treatment he requests (which is not jurisdictional under K.S.A. 44-534a(a)(2)) but that claimant had failed to establish that his need for psychological/psychiatric treatment arose out of and in the course of his employment and was therefore causally related to his accident. And that conclusion is, in the Board's view, jurisdictional.<sup>9</sup>

The ALJ denied the claimant's request as he concluded that claimant had failed to satisfy his burden of proof that his present need for the requested treatment was causally related to his underlying accident. Indeed, it seems that both Dr. Parks and Dr. Moeller agree that claimant's psychiatric condition is wholly unrelated and predates his compensable accident. In fact, claimant's depression and other psychiatric complaints date back to 1985. But, Dr. Parks (who is not a psychologist or psychiatrist) has suggested that the treatment for the claimant's depression and anxiety disorder will significantly benefit and maximize the claimant's long-term pain management. In essence, the sought-after treatment will enhance his recovery. He does not say it is reasonably necessary to cure and relieve claimant's symptoms.

Dr. Moeller has reported that claimant certainly needs further treatment of his anxiety and depressive issues but he says that these issues "cannot be determined as having been caused or exacerbated by the work-related physical injury".<sup>10</sup> And he does not say the treatment is reasonably necessary to cure and relieve claimant's symptoms.

For these reasons, this Board Member is unwilling to disturb the ALJ's preliminary hearing finding and affirms the Order as to the conclusion that claimant has failed to meet his burden of establishing his need for the psychological/psychiatric treatment is causally related to his underlying injury. That aspect of the Order is affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.<sup>11</sup> Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Bruce E. Moore dated February 27, 2008, is affirmed.

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<sup>9</sup> *Farra v. Mercy Hospital*, No. 1,005,822, 2004 WL 1301715 (Kan. WCAB May 27, 2004).

<sup>10</sup> Dr. Moeller's Report dated Dec. 3, 2007 at 20.

<sup>11</sup> K.S.A. 44-534a.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April 2008.

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JULIE A.N. SAMPLE  
BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant  
Wade A. Dorothy, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge